

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WARREN BERES, *et al.*,

Plaintiffs,

v.

UNITED STATES,

Defendant.

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)  
)  
) Nos. 03-785L, 04-1456L, 04-  
) 1457L, 04-1458L, 04-1459L, 04-  
) 1463L, 04-1465L, 04-1466L, 04-  
) 1467L, 04-1468L, 04-1469L, 04-  
) 1471L, 04-1472L, 04-1473L, 04-  
) 1474L  
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The Honorable Marian Blank Horn

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DECLARATION OF RAY SPENCER

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I, Ray Spencer, make the following declaration:

1. I and my wife Lael Spencer are Plaintiffs in this case. We purchased our property along East Lake Sammamish in 1992.

2. Since the time of our purchase, we have used on a regular basis the area within the railroad right of way that lies both west and east of the railbed as if it were our own.

3. Shortly after moving in to our property, we were notified by the Burlington Northern Railway that we would need a crossing permit from the railroad company to continue to have the access road to the lane that provides access to all properties within the unrecorded plat of Willis Connell. I told Burlington Northern that all it has is an easement, that I owned the fee, that I had the right to use the right of way area in front of my house in any manner which does not interfere with the railroad's easement, and that I did not need the railroad's permission. I never heard

from the railroad again. We have continued to allow the people in the neighborhood to use that access road to access the lane that leads to their homes.

4. My wife and I have possessed the entire railroad right of way in the following manner. On the west side of the railroad tracks, at the time of our purchase there was a grassy area between the railroad tracks and the lane that provides access to my neighbors. In that grassy area, I installed a garden, a raised bed for flowers and installed large boulders around the perimeter. I have continued to maintain these features every year since they were installed.

5. Because I was became the president of an organization that was challenging King County's construction of a trail on the railroad right of way without permits, King County personnel came one day with heavy equipment and removed my raised garden. After contacting an attorney, County personnel or contractors replaced my garden. The garden structures were gone for approximately two months and that is the only time since our purchase of the property that the raised garden was not there. It has been used and maintained on a regular basis both before and after that time.

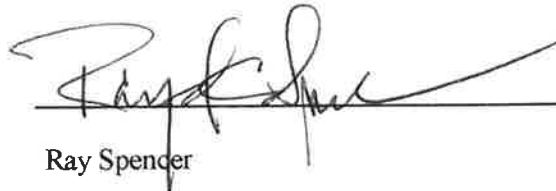
6. On the east side of the railroad tracks and within the railroad right of way, I continued to allow children to use a shelter while waiting for the school bus. I have maintained a flag pole in that area ever since we purchased the property until this day. On the west and north side of the shelter, I maintained the area every year by removing blackberry bushes and using the area for creating compost. There are also fruit trees behind the shelter that I have maintained since we purchased the property until this day and from which I harvest fruit each year.

7. Attached hereto as Exhibit A is a true and correct copy of a drawing prepared by Eric LaBrie of ESM Consulting Engineers. I met with Mr. LaBrie on January 4, 2018 and explained to him our use of the right of way since we purchased the property in 1992. Exhibit A generally

that these areas actually run together. For instance, there is no area of non-use between Areas C and D or between Area D and railroad track. Also, Exhibit A does not show the area north of the shelter that we've used for composting and have maintained by removing blackberries.

8. Basically, since we purchased the property until the present, we have used the entire right of way on a regular basis as it were our own by actively maintaining the landscaping and structures located in the right of way. There is no portion of the right of way that we have not used regularly since our purchased the property. Other than King County after 1998, no one ever told me that we did not own the railroad right of way or that someone else owned it. Prior to 1998, no one except Burlington Northern railroad ever suggested that I needed permission to use the right of way. Our possession of the right of way has been visible to anyone who thought they might have owned it and no one ever came forward to make the claim that they owned the right of way, with the exception of King County after 1998.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and was executed by me this 2<sup>nd</sup> day of February, 2018, at Sumner, WA Washington.

  
Ray Spencer

